

LMR DECISIONS DIGEST

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ALR-200-0779

CHANGE No. 9 Dated October 7, 1983

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

Retain this cover page after filing the inserts so you will know when these changes were added. Place it between the Cover and the "INTRODUCTION" page. Note that pages in the DECISIONS DIGEST are not numbered or dated. We have chosen to identify them by the Sections and the paragraphs which they contain.

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SECTION 1.2 ANTI-UNION BIAS

- a. A controller at the Houston **ATCT** complained that he was not selected for a vacancy because of his activities on behalf of **PATCO**. The ruling held that the complainant had not shown a violation of Section **19(a)(2)** of **EO 11491** by a preponderance of the evidence. Important considerations in the ruling were the facts that the complainant's qualifications for the job were not clearly superior to the other applicants' and the selecting official had had no discussion with any other official concerning the complainant. (**A/SLMR No. 126**). By way of contrast, a somewhat similar **ULP** against another agency (not FAA) over a supervisor's written remarks on a performance appraisal form about union activity was upheld. The supervisor had violated Section **19(a)(2)** by noting simply that the employee was "active in the union."
- b. An Unfair Labor Practice complaint filed by the union (**NAGE**) alleged that management had violated Section **19(a)(1)**, **(2)**, and **(6)** of the Order by denying promotions to four union members because they had grieved or complained about certain matters and by failing to meet and confer on plans and proposals affecting working conditions and reassignments.

The evidence failed to show **(1)** any anti-union animus, **(2)** that the alleged ~~discriminatees~~ were the only employees denied promotion, or **(3)** that they were better qualified than other employees. The **ALJ** concluded that the evidence failed to show that the alleged ~~discriminatees~~' grievances and complaints played any part in their failure to achieve promotions. He recommended dismissal of the **19(a)(1)** and **(2)** allegation.

The union did not present evidence to support its allegation of failure to meet and confer. The **ALJ** recommended dismissal of the **19(a)(6)** allegation for lack of prosecution.

The Assistant Secretary accepted the recommendations of the **ALJ**. (**A/SLMR No. 685**).

- c. The union (**NAATS**) alleged in its complaint that management disciplined the **NAATS** Facility Representative because of his union activity. The **ALJ** noted that investigation of a certain private business interest of the Facility Representative did not begin until after he was elected to the office, even though the employer had known about his interest for several years. The **ALJ** also noted that though other employees were, on occasion, tardy, only the Facility Representative was given a warning letter for tardiness. It could reasonably be inferred, the **ALJ** concluded, that anti-union animus existed. He found that management had violated Section **19(a)(1)** and **(2)** of the Order. The Assistant Secretary adopted the **ALJ's** findings. (**A/SLMR No. 704**).

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section 1. 9 APPEARANCES OF WITNESSES.

- a. An employee of the Bellingham **FSS** ~~traveled~~ to San **Juan, Puerto** Rico, to appear as a witness in an unfair labor practice complaint hearing. His absence from work was not approved. He was placed in an **AWOL** status and suspended for 3 days. **NAATS** filed an unfair labor practice complaint. Although, *in* the view of the Assistant Secretary, the purposes of **EO 11491** would be better served if **PRIOR** approval of a "Request for Appearances of Witnesses" were obtained before an employee is granted official time and expenses to appear as a necessary witness at a **DOL** hearing, he found that, considering all the circumstances, the employee had been disciplined for his appearance at a hearing under the provisions of **EO 11491**. Therefore, he found that the discipline was violative of Section **19(a)(1)** and **(4)** of the Order. (This decision was appealed to the **FLRC** which denied review.) (**A/SLMR** No. **597**)).
- b. The union filed a grievance when a bargaining unit employee was terminated from a course of training. The employee was also downgraded because he failed the training. He appealed the downgrade, and the grievance was held until the appeal was decided. When his appeal was denied, the union wanted to take the grievance to arbitration. Management declined, however, contending that the grievance was over the same issue that had just been appealed. When the union selected an arbitrator, management refused to take part in the hearing. The union then filed an unfair labor practice charge which proceeded to complaint. **FLRA** dismissed the union's **ULP** in its entirety. (**7 FLRA** No. **23**)

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SECTION 1.10 COMPLAINT AGAINST UNION

- a. An air traffic controller at the Indianapolis Center filed an unfair labor practice complaint against **PATCO**. He said that he was denied participation in the reduced air fare program which **PATCO** had created because he was not a **PATCO** member. He believed that **PATCO** was, thereby, trying to get him to join the union and that his rights under **EO 11491** were being violated. The Assistant Secretary found that **PATCO's** reduced air fare program was an outside arrangement of the union for its members and that it could deny participation to nonmembers. Such outside arrangements are not "conditions of employment." (**A/SLMR No. 442**)
- b. An air traffic controller at the St. Louis **ATCT**, a member of **PATCO**, filed a **ULP** complaint in which he said he was shunned and, on one occasion, threatened by local union officials and other members because he differed with them on the methods they proposed to use to reach certain union goals. Other controllers, he said, repeatedly asked him to "Say again," denied his requests to enter their airspace, and denied his requests for early descent. The Assistant Secretary found that the record supported the complaint. The union, he said, had violated Section **19(b)(1)** and **(3)**. He directed the union to post notices that it would not engage in such activity again. (**A/SLMR No. 878**)
- c. At the Aurora **ARTCC**, the union, **PATCO**, polled its members about their views on a proposal to change certain employee's shift schedules. A nonmember, who was not allowed to take part in the poll, filed a **ULP**, contending that the union was not living up to its responsibility to represent all the employees in the bargaining unit. The Assistant Secretary found, however, that unless a union is arbitrary, discriminatory, or acting in bad faith, it has broad latitude in this area. He dismissed the complaint. (**A/SLMR No. 918**)
- d. When the regional representative of a national union refused to process the grievance of three bargaining unit employees, who were not union members, they filed an unfair labor practice charge. His refusal apparently stemmed from the recently stated policy of his national union, which offered the services of its lawyers only **to** union members in its bargaining units. The authority found the union's disparate treatment of members and nonmembers an unfair labor practice and directed the union to represent all bargaining unit employees on an equal basis without regard to union membership. (**#34**) **2FLRA 103**, (Case No. **72-7821(CO)**), Chapter 1)

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1.111 (continued)

- i.. Management removed a television set from a so-called break room. A set had been in the room for about 8 years. Several first line supervisors had recently complained that the set interfered with work. They recommended that it be removed. Management told the union about its intention to remove the set the day before it did so. The union charged an unfair labor practice but the Administrative Law Judge found the union, when told that the set was to be removed, did not ask to bargain. The parties, he said, had reached a good faith impasse and management could therefore remove the set. The complaint was dismissed in its entirety. **(5 FLRA No. 106)**
- j- An air traffic controller asked for sick leave but his request was turned down. He later had an altercation with a fellow controller over the use of airspace and was relieved from his position. He went to a nearby room used for breaks and lunches. There he complained to his local union representative. About **15** minutes later his supervisor told him he should get a representative because he (the supervisor) wanted to have a counseling session which could lead to discipline. The controller asked the local union representative to come to the meeting with him. The meeting turned into an argument. The representative was advised that he might be disciplined and to get himself a representative. He did so and was reprimanded for his part in the argument. The union charged an unfair labor practice. It said the union representative's conduct was protected by his position in the union and his obligation to speak for the controller. The **ALJ** found a violation of the statute, i.e., that the supervisor had committed an unfair labor practice. **(6 FLRA No. 116)**

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2.5.2 (continued)

- 222.** A **PATCO** facility representative brought a tape recorder to a training session at the tower where he worked. When he attempted to tape the instructor's talk, the instructor (a supervisor) told him to stop. Later the employee attempted the same thing and again the instructor told him to stop. Management suspended him, but he argued that he was acting as facility representative when he tried to record the training. When his grievance went to arbitration, however, the **5-day** suspension was upheld. The arbitrator decided that he had been assigned to the training session as an employee and had to follow his supervisor's instructions.
(~~ANE-80-71-BOS-3~~; **PATCO** March 1978 (Revised October 1979)); Art. 69, Sec. 1))
- aaaa.** An employee who was ordered to stay beyond the end of his shift and work overtime refused to do so. Management decided to suspend him for 5 days. He grieved, and the arbitrator reduced his suspension to 1 day, citing his excellent attendance record among other mitigating circumstances.
(~~(N) AWE-80-2-WUF-2~~; **NAATS** November 1976; **FMCS #80K18810**; Art. 21 and 62))
- bbbb.** A facility chief made a telephone call to the air traffic control tower he was in charge of and spoke to a controller who was about to go on duty for the midnight shift. The controller's speech was slurred. The way he was talking caused the chief some concern. The chief drove to the tower and found the employee unsteady, boisterous, and argumentative. The chief relieved him from duty and told him to go to the break room and rest. The employee said he was going home and did so. He was suspended for **10** days for being under the influence of alcohol at work. When his grievance reached arbitration, the evidence most damaging to the **grievant's** defense was the tape of his recorded telephone conversations. They supported what the chief said about his speech and manner. His grievance was denied.
(~~AEA-80-73-BGM-3~~; **PATCO** March 1978 (Revised October 1979)); Art. 69, Sec. 1))
- cccc.** An employee answered "**no**" to two questions about prior traffic or other convictions when he filled out an application for his Airman Medical Certificate. He had, in fact, two such convictions. He was suspended 1 day for falsifying official documents. He filed a grievance, claiming that the incorrect answers were the result of his haste in completing the form and were not willful. The arbitrator, however, was not persuaded and denied the employee's grievance.
(~~AEA-80-60~~ and ~~61-1AAB31~~; **PATCO** March 1978 (Revised October 1979)); Art. 69, Sec. 1(a))

2.5.2 (continued)

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2.5.2 (continued)

9999. An air traffic controller who had been indicted, along with several other persons, for possession of more than 100 pounds of marijuana, was suspended indefinitely pending investigation of the situation. Management based his suspension on the "crime provision". Under it, if management has reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment can be imposed, the employee may be placed on indefinite suspension. The arbitrator found that aspects of the employee's work were related to drug law enforcement, i.e., surveillance of suspect aircraft movements, and therefore management had just cause to suspend him. The employee's grievance was denied. (~~ASO-81-44-PDK-3~~; PATCO March 1979 (Revised October 1979)); Art. 11 and 69)

hhhh. An air traffic controller smoked marijuana on several occasions in the presence of other people. On an application for his Airman's Medical Certificate he stated that he had no drug or narcotic habit. He was, however, taking prescription drugs and using marijuana at the time. Management proposed his removal and he filed a grievance. The arbitrator found a definite connection or nexus between the employee's off duty conduct and the safety aspects of his job. He denied the grievance. (~~ASO-80-277-ZIX 3~~; PATCO March 1978 (Revised October 1979)); Art. 69)

iiii. An air traffic supervisor walked into a hallway adjoining the radar approach control room in an air traffic control tower and turned on the overhead lights in the room. An air traffic controller at work on one of the radar positions told him, with an oath, to turn the lights off. A few moments later the same controller asked the same supervisor to turn on an electronic landing aid. A heated exchange ensued. Later in the day, the controller went to the supervisor's office. They discussed the incident and another heated exchange occurred.

The controller was suspended for 1 day and filed a grievance. The arbitrator ruled that the grievant's actions and words followed an arbitrary exercise of authority on the part of the supervisor and that the suspension was not taken for just cause. (~~ARM-80-17-COS-3~~; PATCO March 1978 (Revised October 1979)); Article 69, Sec. 1(a)

2.5.2 (continued)

- jjji.** When a supervisor was unable to contact an air traffic specialist to make an overtime assignment, he drove to her home and informed her personally. She accepted the assignment, but when her husband objected, she did not report for work. She later received a letter of reprimand which she grieved. The union set forth several arguments. It said; first, the supervisor invaded the employee's privacy; second, the supervisor could not make an assignment because he was not "on the clock"; third, since the employee was on her day off she could refuse the assignment. The arbitrator waved all these arguments aside, according them no merit. He sustained the reprimand.
(~~(N)~~-ASW-80-34-LIFT-22; NAATS November 1976; Article 69.)
- kkkk.** An air traffic controller gave an aircraft permission to perform an unauthorized maneuver. When his 'supervisor instructed him to rescind the permission, he burst out at his supervisor with abusive and obscene language, but he did what he was told. He was suspended for two days and filed a grievance. The arbitrator concluded that the language was not within the realm of "shop talk" and that the penalty was in accord with management's table of penalties. He denied the controller's grievance.
(ASW-81-15-ABQ-3, PATCO March 1978 (Revised October 1979)); Art. 69, Sec. 1(a)(b)(c).)
- llll.** An air traffic controller asked an airline employee who worked at the same airport for a free ticket to another city. The airline employee, a close friend, gave him one and told him to say it was paid for in case anyone asked. The controller used the ticket, and when asked, said that he had paid for it. Management suspended him for 5-days. He grieved, but the arbitrator upheld the suspension, concluding that when the controller said that he paid for the ticket he revealed that he knew he was doing wrong.
(AEA-80-250-HTS-3; PATCO March 1978 (Revised October 1979)); Art. 69, Sec. 1(d).)
- mmmm.** Six employees, scheduled to attend a job-related training course, asked a supervisor if they would be required to go ahead with the training. He said yes, although the outside temperature was over 95 degrees, and the training required strenuous physical activity. They refused to perform the training and received letters of reprimand. They grieved the discipline, and their grievances went to arbitration. Testimony revealed that only four of the six employees had actually refused to take part in the training, and their grievances were denied. There was no evidence that the other two did so, and their grievances, as a result, were sustained. (FMCS 81K08700; IAFF January 1979; (no article cited))

2.5.2 (continued)

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2.5.2 (continued)

- qqqq. An air traffic controller, working at his position, entered data into the air traffic control computer which made it appear to another controller that two aircraft in the other controller's airspace were on a conflicting course. In other words, though the aircraft were separated, the computer projected information on the controller's radar screen that showed they were in danger of collision. The controller who entered the erroneous data was removed for creating the appearance of a mid-air collision and, thereby, endangering lives and property. The employee's grievance contended that he was checking to see if the computer's conflict alert system was working. The sound of his laughter on the facility's tape recorder and his subsequent apology to the other controller convinced the arbitrator, however, that his act was intentional. The arbitrator sustained the removal. **(ASO-81-70-ZME-3: PATCO March 1978 (Revised October 1979)); Art. 69, Sec. 1(a))**
- rrrr. A flight service station specialist sent a 5 second personal message via FAA teletype circuits early one morning but received no answer. The chief of his facility heard about the message and met with the specialist several days later to talk about it. About 2 weeks later the employee received an official reprimand. He grieved the discipline. The arbitrator held that the discipline was too severe because the practice of sending unofficial messages was one long known to management. In addition, management violated the agreement when it did not offer the employee an opportunity to have a representative at the earlier meeting. **((N) ASW-81-10-AMA-2; NAATS November 1976; FMCS 82K06913; Art. 62, Sec. 1, Art. 63. Sec. 1))**
- ssss. A flight service station specialist was drowsy and could not stay awake for part of his shift. He had trouble operating the teletype and his motions were uncoordinated. According to the testimony of other employees, he said either "I'm drunk." or "I think I'm drunk." Management suspended him for 7 days because of this incident. When his grievance reached arbitration, he attempted to explain or deny the evidence and testimony, but the arbitrator was unconvinced. He denied the grievance, finding clear and convincing evidence that the specialist was under the influence of alcohol or drugs. **((N) ACE-80-23-MKC-2; FMCS 82K07297; NAATS November 1976; Art. 62., Sec. 1(a))**

2.5.2 (continued)

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2.7.1 (continued)

- cc. In a tower which operated from 6 a.m. to 10 p.m., a watch schedule error left a period from 6 a.m. to 2 p.m. uncovered. Management asked two employees, in effect, "Who's going to work six to two?". One declined and one volunteered. The local PATCO representative saw no problem with the arrangement but then changed his mind. He grieved. At the subsequent arbitration, management said the employee volunteered. The union argued that management raised the problem by asking its question. The arbitrator agreed with the union and sustained the grievance. (ASW-77-8-PWM-2; PATCO July 1975; Article 33, Section 2)
- dd. At an air route traffic control center, management added a shift to the watch schedule to accommodate a new program of training for controllers. At first, many controllers volunteered for the training shift. Later, however, management decided to make the shift a mandatory part of the overall watch schedule. The union grieved because it believed management had changed the basic watch schedule without consultation. The arbitrator agreed with the union and directed management to consult or return to the original schedule. (AEA-79-207 and 250-ZNY-33; PATCO March 1978 (Revised October 1979)); Article 33, Section 1)
- ee. A facility chief directed an air traffic controller to undergo a course of remedial training because of performance problems. He changed her work hours to accomplish the training and she filed a grievance, alleging that his schedule change violated the agreement and that the training could be accomplished without the change. The arbitrator, however, found that since the training instructor had other students, the grievant's schedule had to be changed to fit the hours of the training already in progress. He found the change to be necessary and unavoidable. (ASO-79-28-DAB-3; PATCO March 1978 (Revised October 1979)); Art. 33, Sec. 1 and 2)
- ff. When an employee went on sick leave for several weeks the facility chief found it necessary to schedule other controllers to work overtime on their days off. The facility, a very small one, had only two regularly scheduled shifts each day. The necessity for overtime and schedule changes gave rise to three grievances which were combined for the purpose of arbitration.
- The first grievance requested time-and-a-half overtime pay for one eight hour shift worked on an employee's day off. The second and third grievances were filed by another employee and by the union that represented the employees at the facility. All the grievances alleged improper watch schedule changes. They attempted to show that the chief had not given proper notice, had tried to change the basic watch schedule and had tried to assign an employee a split shift (two periods of duty in 1 day). The arbitrator found that the chief had not violated the agreement or applicable directives and denied the grievances. (ANE-80-11, 28, and 33-FWB-3; PATCO March 1978 (Revised October 1979)); Art. 33, Sec. 2)

2.7.4 (continued)

- g.** When a flight service station specialist called in sick, the facility at which he worked was left one employee short on the midnight shift. The supervisor responsible for that shift made the statement that he "sure could **use**" someone to work it. Though he did not specifically ask for a volunteer, a specialist who heard his remark volunteered to work the midnight shift. Later, in an unrelated but similar incident, a supervisor asked another specialist to report 2 hours early for a day shift. Rather than report so early, the specialist volunteered for and was allowed to work the preceding midnight shift. The union filed grievances over these two incidents, attempting to establish management's intent to violate the agreement. Management countered that the employee's actions were voluntary. The arbitrator agreed with management. He said the record was entirely devoid of any hint of management coercion, and he denied the grievances. ((~~(N)~~) ~~ACE-81-(12 and 24)~~-~~MKC-22~~; NAATS November 1976; Art. 32, Sec. 5))
- h.** When two flight service specialists were absent on leave from a particular midnight shift, two other specialists volunteered to work that ~~midshift~~ in lieu of the shifts they were scheduled to work later that day. Another employee grieved, contending that the shift change was made to avoid the payment of overtime. The arbitrator sustained the grievance and ordered overtime pay because management had not considered feasible alternatives before accepting the two volunteers. Management had concluded that the presence of volunteers obviated the need to consider alternative ways to staff the shift, but the arbitrator disagreed.
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2.7.4 (continued)

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((N) ASW-81-13-DAL-22; NAATS November 1976; Art. 32, Sec. 5))

2.7.6. (continued)

- j.** When an employee could not work because of an injury, management made two shift adjustments. However, it did not try to use the five alternatives contained in the then current agreement and it did not call in the employees who should have been called to assure equitable distribution of overtime. The employees grieved, management conceded that it had not made the shift assignment changes properly, and the arbitrator awarded the employees the 8 hours of overtime pay they would otherwise have received. ~~(ANE-79-26 and 27-MHT-3; PATCO, March 1978~~ (Revised October 1979)); Article 33, Section 2)
- k.** During a day shift, a facility chief at an air traffic control tower asked several air traffic controllers if one of them would volunteer to change from a day shift to a midnight shift so that a particular equipment test could be carried out. A controller volunteered and worked the midnight shift. The union representative grieved because, he said, management had not considered the alternatives in the agreement prior to changing an employee's shift. Following the principle that the existence of a list of alternatives (such as the one in the agreement) excludes the use of other alternatives, the arbitrator sustained the grievance. The facility chief should have made use of the agreement's alternatives before changing the employee's shift. ~~((ASW-79-62-AMA-3; PATCO March 1978~~ (Revised October 1979)); Article 33, Section 2)
- l.** A Data Systems Specialist (~~DSS~~) who kept himself qualified as an air traffic controller was scheduled to work a rotating shift schedule and perform air traffic control duties for a ~~2-week~~ period. He, unlike regular air traffic controllers, usually worked "office hours" Monday through Friday. The union grieved his assignment because they thought it was done to avoid payment of overtime. The arbitrator found, however, that no employee would have worked overtime even if the ~~DSS~~ had not worked the rotating shifts. He denied the grievance. ~~((ASO-79-198-DAB-3; PATCO March 1978~~ (Revised October 1979)); Art. 5, Sec. 2.; Art. 33, Sec. 1))
- m.** A flight service specialist left work at **8:00** a.m., the end of his midnight shift. Later that day a watch schedule was posted which changed one of his shift assignments. If he had seen the posting, he would have had ~~8-days' notice~~ of the change. The agreement required 7 days. As it was, however, he returned to work after his 2 days off, saw the amended watch schedule, and grieved the fact that he now had only ~~5-days'~~ notice. Despite management's testimony that the posting amounted to effective notice, the arbitrator ruled that the ~~grievant~~ should have had the opportunity to see the schedule change. He sustained the grievance. ~~((M) ASW-81-1-LIT-2; FMCS #81K/18347; NAATS November 1976; Art 32.,~~ Sec. 5))

2.8.1 (continued)

- bb.** An employee in an air traffic control tower grieved ~~when~~ he was not held over beyond his shift and paid overtime to cover a temporary staffing shortage. Instead, another employee was called in 1 hour before his shift was to begin. The union argued that the agreement required holdover overtime in such situations. The arbitrator found, however, that holdover overtime and its "2 hours of work" requirement apply only when an employee on duty is held beyond the end of the employee's regular shift. Holdover overtime is not required by the agreement and is not the only option available to management in such situations. **(AGL-79-279-WNG-3; PATCO March 1978, (Revised October 1979)); Article 40, Section 5).**
- cc.** An air traffic controller was called in to work overtime on one of his regular days off. He reported to work but said he felt ill and after talking with his supervisor, went home. He was paid for 2 hours of overtime work. He filed a grievance, asserting that he was entitled to 8 hours overtime work according to the agreement. At arbitration, testimony about the meeting between the **grievant** and his supervisor differed. The supervisor believed that the **grievant** asked to go home. The **grievant's** testimony, supported by the testimony of a fellow employee, was that he would work if the supervisor wanted him to but that he was told to go home. The arbitrator was persuaded by the fellow employee's testimony and sustained the grievance. He awarded the **grievant** 8 hours overtime pay. **(AEA-80-81 and 82-PHL-3; PATCO March 1978 (Revised October 1979)); Art. 40, Sec. 4)**

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2.9.3 INVOLUNTARY SICK LEAVE

- a. A controller who did not pass a certain portion of his required annual physical was assigned to flight data duties. After some time had elapsed, during which the employee was unable to get an appointment with a medical specialist, and during which the office of the doctor who had examined him apparently failed to mail in further reports on his condition to the Assistant Regional Flight Surgeon, he was placed on involuntary sick leave. He asked to continue performing flight data duties, but his request was denied. He grieved, arguing that flight data duties were noncontrol (non-air traffic control) duties. ~~Management~~ said that his request was not in writing, as contract language required, and that flight data duties were control duties. The arbitrator concluded that the denial of the ~~grievant's~~ request for continuation of the limited duties he had been performing for some time was, in the light of all the record, unjustified. The grievance was sustained.
((ASW-75-50-ELP-2; PATCO July 1975; Art. 27 and 42))
- b.. An employee with a history of back problems was placed on involuntary sick leave on two occasions; once for **10** days and once for approximately 6 months. He filed a grievance over both actions. He argued that management did not follow the labor agreement or its own regulations when it placed him on leave without his consent. The arbitrator ruled that the employee had been placed on sick leave without his consent on the first occasion, and that agency procedures were not followed. However, with respect to the second period of sick leave, the arbitrator found that the ~~grievant~~ was properly considered disabled until he presented medical evidence to the contrary. He was then reinstated to his position. The arbitrator sustained that part of the grievance that dealt with the first period of sick leave and denied the rest.
((F) ASW-80-8-RQ; FASTA December 1977; Art. 42, Sec. 10))

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2.9.7 ABSENCE WITHOUT LEAVE

- a. An employee went to see the flight surgeon soon after he came to work. The doctor found that he had a viral infection and recommended two sick days' leave. The employee was eventually off work 6 days. The last two were charged to **AWOL** because he did not call in. He grieved the **AWOL**. At the arbitration hearing, he testified that his leave for the 2 days in question had been approved. The supervisor who talked to him testified, however, that he told the employee. "Call if you can't make it." The arbitrator found the supervisor's testimony more credible and denied the grievance. ((**(F)**) **AEA-77-3-ZNY**; **FASTA** December 1977; Article 42, Sections 2 and 4))
- b. An employee requested 4 days sick leave to care for a member of his immediate family who, he said, had a contagious disease. On his last day of leave, his supervisor called him to say that he would have to bring in a medical certificate to verify the nature of the illness. When the employee returned to work the next day, he refused to do so. He said that under the terms of the labor agreement he was not required to present a certificate for sick leave of 4 days or less. He grieved when he was charged **AWOL**. The arbitrator ~~concluded that~~ the agreement provision applied only to occasions when an employee was ill and did not apply when a member of an employee's family was ill. He denied the grievance.
(**AME-79-129-NKY-3**; **PATCO** March 1978; Art. 29 and 54)
- c. An employee who had been late to work a number of times, came in 10 minutes late on a particular afternoon. She was charged 1 hour of absence without leave. She filed a grievance over the **AWOL** charge and a subsequent grievance over a charge of **AWOL** when, at a later date, her request for leave was denied. The issue which reached arbitration was limited to whether management could charge one hour **AWOL** for less than 1 hour's absence. The arbitrator found that, lacking policy or regulation to that effect, management could not so charge the employee. He awarded her back pay, excepting from his award only the time she was actually absent.
(**(N)**) **ASW-81-12** and **14-SHV-2**; **NAATS** November 1976; **FMCS 82K27613**; no specified article.)

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(**(N)**) **ASW-81-12** and **14-SHV-2**; **NAATS** November 1976; **FMCS 82K27613**; no specified article.)

2.10.1 (continued)

- g. Management posted a list showing the names of employees scheduled to work on a particular holiday. One employee, whose name did not appear on the list, asked to work. The supervisor turned down the request after looking over the schedule. The employee grieved. She said that management had violated facility directives. The arbitrator concluded that the agreement grievance procedure limited him to the interpretation and application of the agreement. He could not rule, he said, on alleged violations of an employer's local rules.
(ASO-78-52-ZJX-2; PATCO July 1975; Article 5, and Article 32, Section 4)).
- h. Management reduced facility staffing for a holiday based on its estimate of air traffic activity. The union grieved management's decision. The arbitrator found that management had followed the intent of the agreement. It had based its staffing reduction on air traffic figures for the same holiday in the preceding year. He denied the grievance.
(ASO-78-152-ZML-3; PATCO March 1978; Article 32, Section 5)).
- i. Management at an air traffic control tower had not, in agreement with the facility representative, posted a separate list of employees scheduled to work on a holiday. When the local union elected a new facility representative, he requested such a posting. His request was, in effect, denied and he grieved. Management then offered to post a separate list but the grievance sought back pay for those employees who had not worked on the holiday. The arbitrator found that management violated the agreement when it did not post the separate list but that the violation did not warrant back pay.
(ASO-79-102-FAY-3; PATCO March 1978; (Revised October 1979)); Article 32, Section 4)).
- j. Four air traffic controllers filed grievances over changes in facility staffing for two holidays, Christmas Day 1979 and New Years' Day 1980. The changes to the watch schedules were made after the schedules were posted. The employees said that, under the agreement, management could not change the schedules without the consent of those involved. The arbitrator agreed with the employees. He directed that management cease changing the holiday schedule unless it complied with the provisions of the agreement.
(AEA-79-329, 334, 335, and 336-JFK-3; PATCO March 1978; Art. 32, Sec. 4))

2.10.11 (continued)

- g. Management posted a list showing the names of employees scheduled to work on a particular holiday. One employee, whose name did not appear on the list, asked to work. The supervisor turned down the request after looking over the schedule. The employee grieved. She said that management had violated facility directives. The arbitrator concluded that the agreement grievance procedure limited him to the interpretation and application of the agreement. He could not rule, he said, on alleged violations of an employer's local rules.
(ASO-78-52-ZJX-2; PATCO July 1975; Article 5, and Article 32, Section 4)).
- h. Management reduced facility staffing for a holiday based on its estimate of air traffic activity. The union grieved management's decision. The arbitrator found that management had followed the intent of the agreement. It had based its staffing reduction on air traffic figures for the same holiday in the preceding year. He denied the grievance.
(ASO-78-152-ZML-3; PATCO March 1978; Article 32, Section 5)).
- i. Management at an air traffic control tower had not, in agreement with the facility representative, posted a separate list of employees scheduled to work on a holiday. When the local union elected a new facility representative, he requested such a posting. His request was, in effect, denied and he grieved. Management then offered to post a separate list but the grievance sought back pay for those employees **who** had not worked on the holiday. The arbitrator found that management violated the agreement when it did not post the separate list but that the violation did not warrant back pay.
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2.11.1 (continued)

- g. An air traffic controller reported for training at an air traffic facility as the result of an **ingrade** reassignment. He was informed about **10** months later that he was not making satisfactory progress. He requested another instructor and got one. Shortly thereafter, his within-grade pay increase was withheld because his work was not at an acceptable level of competence. He requested and received a reassignment to a non-radar air traffic facility, but he grieved the denial of his within grade. Among other reasons for his grievance he cited management's failure to give him **80-days'** advance notice of the denial. Such a notice is a provision of the current agreement. The arbitrator, however, found the denial consistent with law and governmentwide regulation, which take precedent over the agreement.
(~~ACE-79-105-LNK-3~~; PATCO March 1978; Art. 26, Sec. 2.)

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2.13.3 SHIPMENT OF PERSONAL AUTOMOBILE

- a. While on vacation on the mainland, an employee of the Honolulu **ARTCC** purchased an automobile to replace his present car and had it shipped to Hawaii at his own expense. After returning, he asked the FAA to pay for the shipping costs under the provisions of Article **19**, Section **4**. The FAA refused payment under the provision of a Pacific Region directive which stated that it was not in the Government's interest to ship a replacement vehicle to Hawaii at Government expense. The arbitrator ruled that the directive, which had been published prior to the labor agreement, was in conflict with and, therefore, was superseded by the labor agreement. Furthermore, he held that the directive was too broad to have constituted a review of the status of an individual employee's vehicle as required by the agreement. The agency's determination that shipping costs were justified on the original car was assumed by the arbitrator to have remained in effect for the replacement vehicle. **(FMCS 74K03954, APC-73-11-ZHN, PATCO April 1973, Articles 19 and 54).**
- b. An air traffic specialist asked that a replacement automobile be shipped to the rather remote area where he lived and worked. His request was denied and while he submitted another request, he paid to have the car shipped by air freight. When management responded to his formal request, he was told that he would be reimbursed about one-third of the cost he paid out-of-pocket. His reimbursement was based on the cost the government would have incurred if it had shipped the car. The employee grieved the amount, but the arbitrator said that he resorted to self-help when he shipped the car at his own expense. According to the arbitrator, the employee should have waited for management's answer. **((N) AAL-80-10-AKN-2;NAATS November 1976; Art.:45, Sec.4.))**

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2.15.8 (continued)

- e. At an air traffic control tower, management reassigned a controller from one working team to another in order to balance the number of people on the two teams. The employee was the least senior member on his team but not the least senior employee among the tower controllers. He grieved that fact and argued, at arbitration, that staffing imbalances must be corrected by seeking volunteers or assigning controllers on the basis of facility wide seniority. The arbitrator agreed with that interpretation of the agreement language and sustained the employee's grievance.
~~((ASO-79-225-TYS-3; PATCO March 1978; Art. 5, Sec. 1 and 2, Art. 24,~~
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2.15.12 (continued.)

- d. An employee who was also a local union representative attended a Systems Error Review Board meeting from **8:30** a.m. to **10:45** a.m. His shift began at **10** a.m. He was paid for the period ~~offtime~~ after **10** a.m. but not paid for the one-and-a-half hour before **10** a.m. He grieved, alleging that the Systems Error Review Board was convened by management, that he was attending as a union representative, and that he should be on official time and paid overtime. The arbitrator, however, read the agreement to provide for official time only if the employee was otherwise in a duty status.
(~~ARM-78-37/38-SIC-3~~; PATCO March 1978; Article 2, Section 9).
- e. An employee approached his supervisor's desk and asked him a ~~question~~. When the supervisor answered, the employee interrupted him with insults and abuse. The employee was subsequently suspended for 3 days. When his grievance reached arbitration, he contended that he was acting in his role as union representative. He said he was attempting to consult with a ~~representative~~ off management. Though management argued that the agreement did not contemplate that such "shop floor" discussions were union management consultations, the arbitrator found a past practice. Union representatives and assistant chiefs had made a practice of discussing union matters in work areas. The arbitrator sustained the grievance and ordered the employee made whole.
(~~ASM-80-107-1AH-3; PATCO~~ March 1978 (Revised October 1979)); Article 69, Section 1 and 9; Article 11, Section 2)
- f. In a rather unique situation where an air traffic facility chief served as the manager of three facilities, the union grieved management's refusal to recognize a union representative at two of the three facilities. Management contended that it should recognize only one rep for three facilities. That rep, it said, should be located at the facility where the chief worked. The three facilities were actually one, according to management. Furthermore, the chief's workload became too heavy when he tried to deal with more than one rep. The arbitrator, however, felt that all the employees at the three facilities should have equal access to union representation, and he sustained the union's position. ((N) ~~AAAL881-3-FAT-2~~; NAATS November 1976; Art. 4, Sec. 1.))

2.15.13 Position Descriptions.

- a. A ~~GS-11~~ **employee** grieved because he felt that his position description did not describe all of his duties. Among other things, he was responsible for a terminal radar transmitter and receiver.

The union argued that the radar transmitter and receiver were a system and the employee should be a **GS-12**. Management said that what the employee worked on was a subsystem. The employee, it said, should be a **GS-11**. The arbitrator said that the equipment in question had been and still was designated a system in certain FAA orders. He said that the employee's duties must be amended to match his position description or his position description must be changed. The arbitrator concluded that he lacked the authority to order a promotion.

~~((F) ASO-79-9-TPA; FASTA, December 1979; Article 3, Section 1, Article 28)).~~

- b. When a major new airport opened up in a metropolitan area, the air traffic controllers at the city's former airport control tower grieved the contents of their position descriptions (**PD**). They contended that they were providing radar approach control service under certain weather conditions but it was not reflected in their **PD's**. The existing labor agreement provided for a **PD** which accurately reflected the duties of an air traffic controller. The arbitrator found that, with the exception of the function known as "vectoring" aircraft on radar the controller's **PDs** did reflect their duties accurately. He denied the grievance in part but sustained it to the extent that language about "vectoring" would be added to the **PDs**.

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2.15.2 Awards.

- a. A controller at the Montgomery, Alabama, **RAPCON/Tower** grieved the failure of his supervisor to recommend him for a Special Achievement Award. Article **50**, Recognition and Awards Program, Section **1**, of the labor agreement, effective April **1973**, says in pertinent part, **"This** program shall not be used to discriminate among employees" **Grievant** alleged improper discrimination. He was, and had **been, receiving** compensation for a service-connected disability. For this reason, he contended, he and other similarly situated employees were not granted performance awards. According to testimony, the **grievant's** supervisor had made a number of derogatory remarks about employees who received "two checks;" i.e., a regular paycheck plus compensation for service-connected disability or retired pay. Based on further testimony concerning the **grievant's** excellent work record and the prejudicial statements reportedly made by the supervisor, the arbitrator sustained the grievance. **(FMCS No. 74K01514, ASO-74-58-MCM, PATCO April 1973, Article 50).** FAA has appealed this arbitration award to the **FLRC.** **(FLRC No. 75A-32).** (See SECTION **3.5**, paragraph **b.**).
- b. **NAS** coordinators and data systems staff members in the Miami **ARTCC** received incentive awards for their contributions to the Radar Data Processing Program during the installation of its equipment and its implementation. The union **(PATCO)** grieved, contending that the controllers also contributed, and should be granted a like incentive award. The arbitrator found that the union made a convincing case for the role of the controllers, but did not show that the failure of the controllers to receive an award was the result of discrimination or favoritism. He denied the grievance. **(ASO-75-100-ZMA(2), PATCO July 1975, Article 50, Section 1).**
- c. Several employees, with the backing of their union, concluded that two awards presented to fellow employees were based on duties outside their position descriptions. The employee group felt they had been discriminated against in the way management conducted its incentive awards program. Because the **awardees** had been away from the facility for a time, the others also felt they had been called upon to do extra work. The arbitrator found that there were some weaknesses in the documentation and the processing of the awards, but that there was no hard evidence in the record to support the claim of unfairness or discrimination in the facility's incentive awards program. He denied the employee's grievances. **((N) ASW-81-2, & 4-DAL; NAATS November 1976; FMCS 82K27379; Art. 31, Sec. 1.))**

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2.15.8 Realignment of the Work Force.

- a. The Oakland **ARTCC** changed the boundaries of its air traffic control sectors and assigned controllers **to** the new sectors based upon **CAA/FAA** length of service and prior sector experience. For example, a controller selected to work a particular control area must have had prior experience on an old area which made up all or part of the new sector. The union (**PATCO**) grieved, saying the agreement had not been followed. Though management argued its reserved rights to assign employees, the arbitrator agreed with the union. He followed one of the basic rules of agreement interpretation. Specific language (in this case, the method of selecting controllers) took precedence over general language (management's reserved rights). This award has been appealed to the **FLRC**. (See Section **3.6**) (**AME-76-59-ZOA-2**, **PATCO** July 1975, Article **24**, Section **3**).
- b. Management requested volunteers to correct a staffing imbalance between two of the three teams of controllers in a certain facility. Of the three teams (called red, white, and blue), management asked for a volunteer to go from blue to red. A controller on the white team, who wanted to go to red, grieved the fact that management didn't ask for volunteers facilitywide. The union took the grievance to arbitration using arguments from the bargaining table to support its case. The arbitrator found the union correct. Management, he said, must look for volunteers facilitywide. **"Total"** **CAA/FAA** service is the key word. He sustained the grievance, (**ASO-77-177-TYS-2**; **PATCO** July 1975; Article **24**, Section **3**).
- c. When a military base closed, one of a group of eight teams of controllers in a **ARTCC** was abolished. The members were given the opportunity to volunteer for one of the other seven teams. **They** grieved and the union argued at arbitration that volunteers should have been sought from all the teams. The arbitrator agreed with the union and sustained the grievances. (**ASW-77-169/170/171/177-ZFW-2**; **PATCO** July 1975; Article. **24**, Section **3**).
- d. The facility chief at an air route traffic control center issued a local order that combined two "sub-areas of specialization." An area of specialization is a geographic area in which air traffic controllers must be able to perform all air traffic control duties. The union **grieved** asserting that management should have asked for volunteers from among the facility work force before it realigned (combined) the sub-areas. At arbitration, management argued that no employees had been reassigned, therefore, no realignment had occurred. The arbitrator, however, was persuaded by the union's reliance on a facility management handbook which defined "area of specialization" as a group of interrelated sectors in which a controller must maintain currency. The fact that no employee was reassigned, he said, was not the issue. He sustained the grievance. (**ASM-80-139-ZHU-3**; **PATCO** March 1978 (Revised October 1979)); Art. **5**, Sec. **1**, Art. **24**, Sec. **3**).

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